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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Steven L. Sapp,)	No. CV 05-052-TUC-FRZ
Petitioner,)	
vs.)	ORDER
Charles Ryan, et al.,)	
Respondents.)	

Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Steven L. Sapp in this action and the Report and Recommendation of the Magistrate Judge, recommending the dismissal of the Petition.

This matter was referred to Magistrate Judge D. Thomas Ferraro pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and report and recommendation.

Magistrate Judge Ferraro issued his Report and Recommendation, recommending that the Court enter an order denying the Petition for Writ of Habeas Corpus and dismissing this action in its entirety based on its finding that Claims 1, 3-7, 8(b), 8(c), and the Supplemental Claim¹ are procedurally defaulted and that Petitioner has not established cause and prejudice

¹On April 30, 2008, the Court granted Petitioner leave to amend and supplement the present Petition, setting forth a briefing schedule and thereby dismissing CV 07-646 TUC-FRZ.

1 or a fundamental miscarriage of justice to overcome the defaults; that Claims 2 and 8(a) are
2 meritless; and that Claim 9 is not cognizable on a federal habeas proceeding.

3 The Report and Recommendation sets forth the factual and procedural history of
4 Petitioner's state court proceedings and the conviction at issue.

5 Petitioner seeks review on nine separate grounds of his conviction in Cochise County
6 Superior Court of Arizona, case number CR-98000484(B), in which Petitioner was convicted
7 by jury on January 28, 1999 of (1) one count of knowingly selling or offering to sell a
8 dangerous drug; and (2) once count of knowingly selling or offering to sell a dangerous drug
9 to a minor, which occurred on or approximately August 21, 1996.

10 On June 14, 1999, Petitioner was sentenced to presumptive terms of two five-year
11 concurrent sentences, to run consecutively to the sentenced imposed that same date in two
12 separate cases Petitioner was also convicted in by jury.²

13 As set forth in detail in the Report and Recommendation, Petitioner has not
14 established cause and prejudice or a fundamental miscarriage of justice to overcome the
15 defaults and has further failed to establish a cognizable claim or present and substantiate a
16 claim with would entitle him to relief.

17 Petitioner filed his objections to the Report and Recommendation pursuant to 28
18 U.S.C. §636(b), claiming factual innocence and challenging the state courts' substantive and
19 procedural findings and the findings of the Magistrate Judge herein.

20 The Court finds, after consideration of the matters presented and an independent
21 review of the record herein, including Petitioner's detailed objections to the Report and
22 Recommendation, that the Petition should be denied and this action be dismissed in
23 accordance with the recommendation set forth therein.

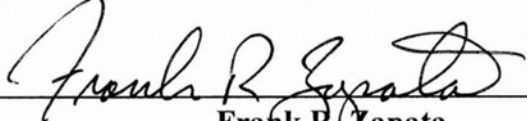
24 Based on the foregoing,
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27 ²Petitioner was also convicted of other felony offenses in Cochise County Superior
28 Court in unrelated, unconsolidated cases CR 98000325 and CR 97000452, and sentenced in
all three cases on the same date.

1 IT IS ORDERED that Magistrate Judge Ferraro's Report and Recommendation [Doc.
2 32] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law
3 by this Court;

4 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is DENIED;
5 IT IS FURTHER ORDERED that judgment be entered accordingly.
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7 DATED this 14th day of September, 2011.

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10 **Frank R. Zapata**
11 **Senior United States District Judge**
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